

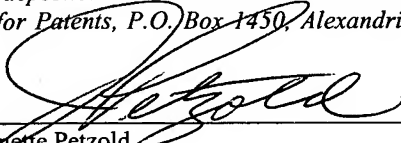


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AF-13679/1

PATENT

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Jeanette Petzold

Applicant : Steven E. Sadinsky Confirmation No. 8001  
Application No. : 10/723,817  
Filed : November 25, 2003  
Title : TENSIONED PROTECTIVE FENCE WITH GATE AND METHOD OF  
INSTALLATION THEREOF  
  
Grp./Div. : 3679  
Examiner : Michael P. Ferguson  
  
Docket No. : 50833/TJD/G316

**SUBMISSION OF APPELLANT'S AMENDED BRIEF  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Post Office Box 7068  
Pasadena, CA 91109-7068  
October 25, 2005

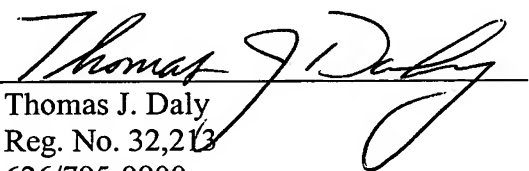
Commissioner:

Enclosed for filing are the **original and two copies** of Appellant's **Amended Brief** for this application. A fee of \$250 was previously submitted with Appellant's Brief.

The Commissioner is hereby authorized to charge any further fees under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account No. 03-1728. Please show our docket number with any charge or credit to our Deposit Account. **A copy of this letter is enclosed.**

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By   
Thomas J. Daly  
Reg. No. 32,213  
626/795-9900

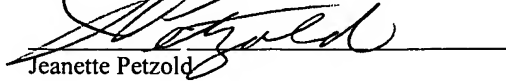
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Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Post Office Box 7068  
Pasadena, CA 91109-7068  
October 25, 2005

Commissioner:

Applicant, Steven E. Sadinsky, hereby files this brief in support of his appeal from the May 18, 2005 rejection of certain claims pending in the application.

**I. REAL PARTIES IN INTEREST**

The real parties in interest are:

1. Guardian Pool Fence Systems, Inc., owner of this application pursuant to an assignment; and
2. Inventor Steven E. Sadinsky.

**II. RELATED APPEALS AND INTERFERENCES**

None.

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**III. STATUS OF THE CLAIMS**

Claims 21-23 are cancelled; and

Claims 1-20, 24, and 25 are under appeal.

**IV. STATUS OF THE AMENDMENTS**

No amendment was filed after issuance of the Final Rejection on May 18, 2005. Thus, the claims on appeal are the claims in Application No. 10/723,817 as of May 18, 2005.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 1 is directed to a lightweight fence **10** and gate **15** for swimming pools surrounded by a deck. *See Specification at page 2, lines 25-27 and Fig. 2.* The lightweight fence **10** is comprised of a plurality of poles **11**. *See Specification at page 5, lines 20-21 and Fig. 2.* The poles **11** include an insert **93** that is contained within each pole **11** and a pin **91** that is fixedly attached to each insert **93**, the pin **11** protruding from the bottom of each pole **11**. *See Specification at page 2, lines 28-29 and Fig. 3a.* Further, the pins **91** are adapted to be inserted into the pool deck adjacent to the pool; and the pool deck has a plurality of sockets, each socket adapted to receive one pin **93**. *See Specification at page 1, lines 32-33.* A mesh screen **72** is tensioned between the poles **11** having an upper binding **13** and a lower binding **12**. *See Specification at page 2, lines 29-30 and Fig. 2.* The gate **15** in the lightweight fence **10** also has the mesh screen **72** tensioned within upright support members **31&33**. *See Specification at page 2, lines 29-35 and Figs. 2 and 3.* The lightweight fence **10** has support means (**13, 31, 32, 33**) capable of withstanding lateral tension forces of the mesh screen **72** and latching the gate **15**. *See Specification at page 2, lines 30-35 and Figs. 3, 4, 5.* Hinges **74** are secured to the gate **15**. *See Specification at page 2, lines 33-35 and Figs. 3, 4, 5, 7, 7a, 7b.* Also secured to the gate **15** is a latch device **53**. *See Specification at page 2, lines 34-35 and Figs. 3, 4, 12.*

Independent claim 10 is directed to a lightweight fence **10** and gate **15** for swimming pools surrounded by a deck. *See Specification at page 2, lines 25-27 and Fig. 2.* The lightweight fence **10** is comprised of a plurality of poles **11**. *See Specification at page 5, lines 20-21 and Fig. 2.* The poles **11** include an insert **93** that is contained within each pole **11** and a pin **91** that is fixedly attached to each insert **93**, the pin **11** protruding from the bottom of each pole **11**. *See Specification at page 2, lines 28-29 and Fig. 3a.* Further, the pins **91** are adapted to

be inserted into the pool deck adjacent to the pool; and the pool deck has a plurality of sockets, each socket adapted to receive one pin **93**. *See Specification at page 1, lines 32-33.* A mesh screen **72** is tensioned between the poles **11** having an upper binding **13** and a lower binding **12**. *See Specification at page 2, lines 29-30 and Fig. 2.* The gate **15** in the lightweight fence **10** also has the mesh screen **72** tensioned within upright support members **31** & **33**. *See Specification at page 2, lines 29-35 and Figs. 2 and 3.* The lightweight fence **10** has support means (**13**, **31**, **32**, **33**) capable of withstanding lateral tension forces of the mesh screen **72** and latching the gate **15**. *See Specification at page 2, lines 30-35 and Figs. 3, 4, 5.* Hinges **74** are secured to the gate **15**. *See Specification at page 2, lines 33-35 and Figs. 3, 4, 5, 7, 7a, 7b.* Also secured to the gate is a latch device **53**. *See Specification at page 2, lines 34-35 and Figs. 3, 4, 12.* The support means includes a truss structure capable of isolating the lateral tension forces of the mesh screen **72**. *See Specification at page 3, lines 18-22.*

Independent claim 14 is directed towards a method for installing a self closing gate **15** in a tensioned removable swimming pool fence **10** comprising a plurality of poles **11**, the poles **11** including an insert **93** that is contained within each pole **11** and a pin **91** that is attached to each insert **93**, the pin **91** protruding from the bottom of each pole **11** interconnected by flexible mesh fencing **72**. *See Specification at page 3, lines 1-3.* The flexible mesh fencing **72** further comprises inserting the pins **91** protruding from the plurality of poles **11** into a deck having drilled sockets adapted to receive the pins **91** and surrounding a swimming pool with the flexible mesh fencing **72** in tension to maintain the fence in tension. *See Specification at page 3, lines 3-5.* The first and last poles of the series of poles define a gate opening whereby the gate **15** is free to open and close without interference by the tension of the mesh of the fencing. *See Specification at page 3, lines 5, 12-13.*

Independent claim 18 is directed towards a fence pole **11**. *See Specification at page 2, line 18 and Fig. 3a.* The fence pole **11** has a lower end, and at this lower end is an insert **93**. *See Specification at page 2, lines 18-19 and Fig. 3a.* A pin **91** is adhesively attached to the insert **93**. *See Specification at page 2, line 18-19 and Fig. 3a.* The pin **91** has a smaller diameter than that of the pole **11**. *See Specification at page 2, line 18-20 and Fig. 3a.* Furthermore, the pin **91** protrudes from the lower end of the fence pole **11**. *See Specification at page 2, line 18-21 and Fig. 3a.*

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

A. Claims 18, 20, and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by Rasso (US 2,384,338).

B. Claims 18, 19, and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by O'Fearn (US 4,576,364).

C. Claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Fearn.

D. Claims 1-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sadinsky et al. (US 5,664,769) in view of O'Fearn.

**VII. ARGUMENT**

**A. Claims 18, 20, and 25 were improperly rejected under 35 U.S.C. § 102(b) as being anticipated by Rasso (US 2,384,338).**

The chiseled point described in Rasso does not anticipate claim 18 of the present invention. Claim 18 of the present invention claims a gate pole containing a pin of a smaller diameter "wherein the pin is adapted to be inserted into a drilled socket in a pool deck." Rasso describes a fence post which may be driven into the ground without mutilating its upper end. *See Rasso, Col. 1, lines 1-5*. Rasso describes a removable driving head that may be attached to a post when it is driven into the ground. *See Rasso, Col. 1, lines 11-13*. Rasso further describes a driving point welded to the lower end of the pipe with a widened tapered chisel in order to facilitate driving the pole into the ground. *See Rasso, Col. 2, lines 5-8 and Fig. 5*. The Rasso invention is designed to be driven forcibly into the ground and not inserted into drilled sockets in solid deck surfaces, such as those that surround a pool. *See Rasso, Col. 2, lines 32-34*. Clearly the chiseled point at the end of Rasso's post would not be utilized for insertion into a drilled socket in a pool deck.

The design of the poles in Rasso actually hinders or even completely impedes inserting them into drilled sockets. The poles described in Rasso actually taper outward and flatten in order to form a chisel. *See Rasso, Fig. 5*. The chisel is an irregular shape that could not be replicated by a drilled socket, which, by virtue of being created by drilling, would have to be circular in shape with a circular outer diameter. Also, because the Rasso post tapers outward to form a chisel, the poles in Rasso have a wider diameter at the bottom. *See Rasso, Fig. 5*. Thus,

in order for the poles described in Rasso to fit into a predrilled socket, the socket would have to have a diameter large enough to accommodate the widest part of the pole, in this case, the very bottom portion of the pole. This would leave a large gap between the walls of the socket and the vast majority of the pole. Additionally, inserting the poles described in Rasso into sockets like those claimed in claim 18 would require that they each balance themselves at the point of the chisel, which is thin and sharp in order to facilitate it being driven into the ground. *See Rasso, Fig. 5.* Therefore, the poles described in Rasso could not be sturdily inserted into predrilled sockets without wobbling. Such wobbling would completely defeat the purpose of the claimed invention (a stable, safe fence). Instead, everything about Rasso, from the design, to the methods of use described in the specification, indicates that the poles in Rasso are designed only to be driven into the ground, or another soft surface, that can conform to the irregular shape of the pole. As such, the very design of Rasso actually teaches away from the idea of pins inserted into predrilled sockets in a pool deck.

Furthermore, Rasso does not describe nor suggest any preparation of the "ground" into which the post is to be driven. No drilling of sockets are described or suggested. Rather, the use of a driving tool, such as a sledge hammer as suggested in the specification; the need to avoid mutilation of the head; and the chisel point at the bottom of the pole, all strongly indicate that Rasso's post must create its own space during the process of being driven into the ground. *See Rasso, Col. 1, lines 45-49; Col. 2, lines 8 and 11-13.*

Finally, Rasso does not at any point describe a gate pole, let alone a gate pole adapted to be inserted into a drilled socket in a pool deck as claimed in claim 18. Rasso never once mentions sockets and instead focuses entirely on driving the poles into the ground. As explained above, Rasso cannot be successfully used with sockets, a fact that explains why there is no mention of sockets within Rasso.

Accordingly, Applicant respectfully submits that claim 18 is patentable over the cited reference. Claim 20 depends from claim 18. Since claim 20 depends from claim 18 and because it contains additional limitations distinguishing it from the cited reference, claim 20 is thus also patentable. Claim 25 also depends from claim 18. Since claim 25 depends from claim 18 and because it contains additional limitations distinguishing it from the cited reference, claim 25 is thus also patentable. For these reasons, Applicant respectfully submits that the Examiner has failed to show that independent claim 18 and dependent claims 20, and 25 are anticipated by

prior art. Accordingly, Applicant respectfully requests that the Examiner's rejection of claims 18, 20 and 25 be reversed and that the case be remanded to the Examiner for allowance of the claims.

**B. Claims 18, 19, and 25 were improperly rejected under 35 U.S.C. § 102(b) as being anticipated by O'Fearn (US 4,576,364).**

The sharply pointed stake described in O'Fearn does not anticipate claim 18 of the present invention. Neither pins nor sockets are mentioned anywhere in the cited reference. Instead, O'Fearn describes a portable wind screen having poles of sufficient length to have a protruding end that can be pushed into the ground or soil to stand the screen upright. *See O'Fearn, Col. 1, lines 15-18*. In particular, O'Fearn describes a stake telescoped within hollow poles, the stake being cut to one end at such an angle as to provide a sharp point for ease of insertion into sand. *See O'Fearn, Col. 1, lines 39-42*. Furthermore, the bottom portion of each pole is designed to have a diameter only slightly smaller than that of the pole so that it can be telescoped into the top of another pole so as to allow stacking of one screen onto another. *See O'Fearn, Col. 1, lines 24-27*. On the other hand, claim 18 claims a pole with an inner sleeve fixedly attached to a pin of a smaller diameter than the pole so as to be insertable into predrilled sockets in a pool deck.

The purpose and design of O'Fearn run completely contrary to those of the present invention, so much so that O'Fearn actually teaches away from the idea of poles with pins that may be inserted into predrilled sockets in a pool deck. The angular cut at the bottom of the poles in O'Fearn forms a spike so that each pole may be pushed into sand or soil. *See O'Fearn, Col. 1, lines 15-18 and 39-42 and Fig. 2*. The pins claimed by claim 18, however, are designed to slide into predrilled sockets in a pool deck. *See Instant Specification at page 2, lines 29-32 and at page 1, lines 31-33*. Nowhere in the reference does O'Fearn mention predrilled sockets or a pool deck, let alone the idea of inserting pins into sockets.

In fact, the very design of O'Fearn's poles hinders, or even completely impedes, inserting them into a predrilled socket because the sharp spike at the end of the pole is designed to facilitate the creation of a new hole by pushing the pole into sand or soil, which the specification describes as the purpose for the invention. *See O'Fearn, Col. 1, lines 5-7 and 15-17; Col. 3, lines 39-44*. Also, the spiked portions of the poles in O'Fearn do not uniformly taper

into a sharp point. Instead, one side of the stake is cut at such an angle so as to provide a sharp point. *See O'Fearna, Figs. 2 and 6.* This creates an irregular shape that could not be replicated with a drilled socket, which would be regular in shape with a regular outer diameter. Inserting this irregularly shaped, sharply pointed end of the stake described in O'Fearna into a predrilled socket would result in a pole resting on a sharp point and thus unstable in the socket. Moreover, the stake would only partially conform to the socket, which would create wobbling and instability. This instability would completely frustrate the purpose of the claimed invention and causes O'Fearna to teach away from the concept of a drilled socket.

Furthermore, nowhere does O'Fearna describe nor suggest any preparation of the sand or soil into which its stake is to be pushed. No drilling of sockets are described nor suggested. Rather, the use of a sharply pointed stake that may be hollow at the end of the pole strongly suggests that O'Fearna's post must create its own space during the process of being driven into the sand or soil. In fact, the O'Fearna specifically describes these features as existing "for ease of insertion into sand." *See O'Fearna, Col. 1, lines 39-42; Col. 3, lines 39-44.*

Finally, O'Fearna does not describe a gate pole or, more specifically, a gate pole having a pin adapted to be inserted into a drilled socket in a pool deck. Accordingly, Applicant respectfully submits that claim 18 is patentable over the cited reference. Claim 19 depends from claim 18. Since claim 19 depends from claim 18 and because it contains additional limitations distinguishing it from the cited reference, claim 19 is thus also patentable. Claim 25 also depends from claim 18. Since claim 25 depends from claim 18 and because it contains additional limitations distinguishing it from the cited reference, claim 25 is thus also patentable. Accordingly, Applicant respectfully requests that the Examiner's rejection of claims 18, 19 and 25 be reversed and that the case be remanded to the Examiner for allowance of the claims.

**C. Claim 20 was improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Fearna.**

Claim 20 depends from claim 18. Claim 18 is directed towards a fence pole having an insert at the lower end. *See Instant Specification at page 2, lines 18-19 and Fig. 3a.* A pin is adhesively attached to the insert where the pin has a smaller diameter than that of the pole. *See Instant Specification at page 2, line 18-20 and Fig. 3a.* Claim 20 further provides that the insert may be made of metal. *See Instant Specification at page 3, lines 28-30.* O'Fearna specifically



describes stakes that are cut at the bottom at an angle so as to create a spike in order to facilitate their being pushed into "soil or sand." *See O'Fearna, Col. 1, lines 15-18 and 39-42 and Fig. 2.* The pins in the present invention do not form a spike because they are not designed to be driven or pushed into the ground but are instead designed to be inserted into sockets in a pool deck. *See Instant Specification at page 2, lines 29-32 and at page 1, lines 31-33.* Nowhere does O'Fearna mention inserting pins into sockets in a pool deck. Moreover, inserting the sharp, spiked end of the stake described in O'Fearna into a socket in a pool deck would result in a pole resting on a sharp point and yield instability. The stake would only partially conform to the socket, which would further create wobbling and instability. This instability would completely frustrate the purpose of the claimed invention (a safe, stable fence) and therefore causes O'Fearna to actually teach away from the concept of sockets surrounding a swimming pool, which explains why the reference mentions neither pools nor sockets. Applicant respectfully submits that claim 20 was not rendered obvious by the cited reference, as the cited reference actually taught away from the present invention. Accordingly, Applicant respectfully requests that the Examiner's rejection of claim 20 be reversed and that the case be remanded to the Examiner for allowance of the claims.

**D. Claims 1-17 were improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Sadinsky et al. (US 5,664,769) in view of O'Fearna.**

While Sadinsky et al. does teach the insertion of poles into a deck surrounding a swimming pool, the deck having drilled sockets adapted to receive the poles, the sockets are not capable of receiving the pins described in the appealed claims. *See O'Fearna, Col. 1, lines 17-20.* As the Examiner correctly explains, Sadinsky et al. fails to disclose "a lightweight fence and gate wherein the poles include an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole wherein the pin is fixedly attached to the insert by an adhesive." *See Office Action, page 5.* Thus, in order to contain the elements of the claimed invention, any reference combined with Sadinsky et al. would, at the very least, have to teach pins whose design is adapted for insertion into sockets in a pool deck.

Even if there were a motivation to combine the Sadinsky et al. reference with O'Fearna, which there is not, O'Fearna does not contain the elements of the present invention that Sadinsky et al. lack. O'Fearna involves an invention with a completely different method for setting up a wind screen and a completely different pole design. O'Fearna specifically describes stakes that

are cut at the bottom at an angle so as to create a spike in order to facilitate their being pushed into "soil or sand." *See O'Fearna, Col. 1, lines 15-18 and 39-42 and Fig. 2.* The pins in the present invention do not form a spike because they are not designed to be driven or pushed into the ground but are instead designed to be inserted into sockets in a pool deck. *See Instant Specification at page 2, lines 29-32 and at page 1, lines 31-33.* Nowhere in the references do O'Fearna or Sadinsky et al. mention inserting pins into sockets in a pool deck. Moreover, inserting the sharp, spiked end of the stake described in O'Fearna into a socket in a pool deck would result in a pole resting on a sharp point and yield instability. Moreover, the stake would only partially conform to the socket, which would further create wobbling and instability. This instability would completely frustrate the purpose of the claimed invention (a safe, stable fence) and therefore causes O'Fearna to actually teach away from the concept of sockets surrounding a swimming pool, which explains why the reference mentions neither pools nor sockets. Thus, even if one were to combine O'Fearna's spiked ends with Sadinsky et al.'s poles, one would still have an invention that does not contain the elements of the claimed invention and that would not function as the claimed invention does.

Further, O'Fearna describes the use of a sharply pointed stake that may be hollow at the end for the purpose of pushing it into the soil or sand. This suggests that O'Fearna's poles must create their own space during the process of being pushed into the ground. In fact, the specification specifically describes these features as existing "for ease of insertion into sand." *See O'Fearna, Col. 1, lines 39-42; Col. 3, lines 49-44.* Not only does O'Fearna not once mention sockets, but the very design of O'Fearna also actually teaches away from the idea of sockets in a pool deck because, by their very design, the poles in O'Fearna are formed in such a manner as to facilitate the creation of a new hole in a soft surface, such as sand or soil. For these reasons, combining O'Fearna with Sadinsky et al. would only result in a fence with sharply spiked poles unsuitable for insertion into sockets. Thus, even if there were a bona fide motivation to combine the two references, which there is not, doing so would still not create a device equivalent to the invention described by claims 1, 10, and 14 and would thus not disclose every element contained therein.

Accordingly, Applicant respectfully submits that claims 1, 10, and 14 are not rendered obvious by the cited references because even if there was a motivation to combine them, which there is not, they do not disclose all of the elements of claims 1, 10, and 14. Claims 2-4 depend

from claim 1. Since claims 2-4 depend from claim 1 and because they contain additional limitations distinguishing them from the cited reference, claims 2-4 are thus also patentable. Claim 5 depends from claim 4 which depends from claim 1. Since claim 5 depends from claim 4 which depends from claim 1 and because it contains additional limitations distinguishing it from the cited reference, claim 5 is thus also patentable. Claims 6-9 all depend from claim 1. Since claims 6-9 all depend from claim 1 and because they contain additional limitations distinguishing them from the cited reference, claims 6-9 are thus also patentable. Claims 11-13 all depend from claim 10. Since claims 11-13 all depend from claim 10 and because they contain additional limitations distinguishing them from the cited reference, claims 11-13 are thus also patentable. Claims 15-17 all depend from claim 14. Since claims 15-17 all depend from claim 14 and because they contain additional limitations distinguishing them from the cited reference, claims 15-17 are thus also patentable. Claim 24 depends from claim 1. Since claim 24 depends from claim 1 and because it contains additional limitations distinguishing it from the cited reference, claim 24 is thus also patentable. Accordingly, Applicant respectfully requests that the Examiner's rejection of claims 1-17 be reversed and that the case be remanded to the Examiner for allowance of the claims

Even assuming that Sadinsky, et al. and O'Fearn disclose every element in the above claims, which they do not, the Examiner's rejection under 35 U.S.C. § 103 is improper in this case. It is well settled that a *prima facie* case of obviousness cannot be established by merely locating references which describe various aspects of a patent applicant's invention. The Examiner must also "show some objective teaching in the prior art . . . that would lead [one of ordinary skill in the art] to combine the relevant teachings of the references." In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988); see also Ex parte Levengood, 28 U.S.P.Q.2d 1300, 1302 (BPAI 1993). Moreover, when the references do not explicitly provide such motivation, "[t]he test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370 (Fed. Cir. 2000) as quoted in MPEP 2143.01.

The Examiner asserts in the final office action that it would have been obvious to modify Sadinsky et al. to include the teachings of O'Fearn; however, Applicant submits that the Examiner has failed to make a *prima facie* case here because the references provide no

motivation to combine. As discussed above, O'Fearna would have to be greatly modified, even in combination with Sadinsky et al., to teach an invention equivalent to the present invention. O'Fearna teaches a very specific sort of "insert," specifically a spike to be driven into the sand. There is nothing within the teachings of the art that would motivate someone to convert spikes designed to be driven into sand or soil into pins designed to slide into sockets surrounding a pool deck. Because the insert in O'Fearna would by its very design be unstable in a socket and because the insert in O'Fearna is designed to be driven into soil or sand, O'Fearna actually teaches away from the idea of a socket and thus also teaches away from combining the two references.

The inserts in O'Fearna are also of only slightly smaller diameter than the poles themselves so that they can be telescoped into the poles for portability and storage. O'Fearna would thus require predrilled holes of a wider diameter (approximately the diameter of the pole itself) than would the pins in the present invention. *See O'Fearna at Fig. 2.* Claim 1, 10, and 14 claim a pole comprising an insert that is attached to a pin of a smaller diameter than the pole and that protrudes from the lower end of the pole. The pin in these claims can be of any diameter smaller than that of the pole itself. This flexibility in size allows the pin to be inserted into a drilled socket that has a diameter ranging from one significantly smaller than the pole itself to one only slightly smaller than the pole's. This flexibility in size is not only a feature that O'Fearna's inserts completely lack, but this flexibility also constitutes a significant step forward. One possible advantage of using pins as described in the present invention is that it allows for a decrease in the diameter of the drilled sockets in a pool deck so that the diameter may be smaller than that of the actual poles. Because O'Fearna's stakes must be stable once they are telescoped out of the pole so that the pole can be pushed into the ground, they must have a diameter that is approximately the same as the pole itself. Thus, having pins of a smaller size as described in the claimed invention would make O'Fearna unusable, which would only discourage combining the two references.

Finally, O'Fearna is directed to a portable wind screen whereas Sadinsky et. al. are directed to a pool fence. Pool fences require much more stability and strength than does a wind screen. The two are entirely different technologies, which even further discourages any motivation to combine.

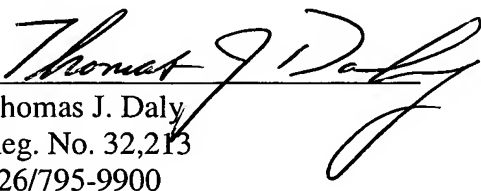
For these reasons, Applicant respectfully submits that even if the two cited references contained all of the elements in claims 1, 10, and 14, which they do not, there still exists no motivation to combine Sadinsky et al. with O'Fearn and no *prima facie* case can therefore be established. Accordingly, Applicant respectfully requests that the Examiner's rejection of claims 1-17 be reversed and that the case be remanded to the Examiner for allowance of the claims

**E. Conclusion**

Neither Rasso nor O'Fearn contains disclosure that anticipates claims 18, 19, 20, or 25 because both of the cited references teach devices designed to be driven into the earth, and the two cited references thus differ in design, purpose, and use to the extent that they cannot be viewed as disclosing anticipating structure. For these reasons, Applicant respectfully submits that the Examiner has failed to show that independent claim 18 and dependent claims 19, 20, and 25 are anticipated by prior art. Further, because the cited references do not teach every limitation of claims 1, 10, or 14 and because there was no teaching or suggestion to incorporate the cited elements of O'Fearn into Sadinsky et al. in a manner provided by these claims, Applicant respectfully submits that the Examiner has failed to set forth a *prima facie* case that independent claims 1, 10, and 14 and dependent claims 2-9, 24; 11-13; and 15-17 that depend on claims 1, 10, and 14, respectively, are obvious in view of the cited references. Accordingly, Applicant respectfully requests that the Examiner's rejection of claims 1-20, 24, and 25 be reversed and that the case be remanded to the Examiner for allowance of the claims.

Respectfully Submitted

CHRISTIE, PARKER & HALE, LLP

By   
Thomas J. Daly  
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626/795-9900

## VIII. CLAIMS APPENDIX

1. A lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles, the poles including an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole;

a mesh screen tensioned between the poles having top and bottom bindings;

a gate in the fence including a frame having a pair of spaced upright support members, a first horizontal brace for spacing the upright support members and a length of mesh screen tensioned between the upright support members;

support means capable of withstanding lateral tension forces of the screen for supporting and latching the gate;

hinges secured to the support means on one side of the gate; and

a latch device secured to the gate and to the support means on the opposite side of the gate;

wherein the pins are adapted to be inserted into the pool deck adjacent to the pool; and

wherein the pool deck has a plurality of sockets, each socket adapted to receive one pin.

2. A lightweight fence and gate as claimed in claim 1 wherein the insert is made of plastic.

3. A lightweight fence and gate as claimed in claim 1 wherein the pin is made of metal.

4. A lightweight fence and gate as claimed in claim 1 wherein the support means includes on each side of the gate a pair of poles inserted into the pool deck with cross members attached to both of the pair of poles.

5. A lightweight fence and gate as claimed in claim 4 wherein the gate includes a generally U-shaped frame opening upwardly with the first horizontal brace secured to the lower ends of the upright support members and a second horizontal brace secured to the upright support members on the pool side of the mesh screen at a height well below the top of the gate fabric.

6. The fence and gate according to claim 1 wherein the insert is polyvinylchloride.
7. The fence and gate according to claim 1 wherein the pin is stainless steel.
8. The fence and gate according to claim 1 wherein the support means includes on each side of the gate a pair of poles having a plastic insert contained within each pole and a metal pin that is attached to each insert, the pin protruding from the bottom of each pole, wherein the pins are inserted into the pool deck and wherein cross members are attached to both poles.
9. The fence according to claim 8 wherein the pin is attached to the plastic insert by an adhesive.
10. A lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles, the poles including an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole;  
a first length of mesh screen tensioned between the poles defining the pool fence;  
a gate in the fence including a frame having a pair of spaced upright support members and a second length of mesh screen tensioned between the upright support members of the gate;  
and  
support means to which the first length of mesh screen is attached for supporting the fence and gate and latching the gate including a truss structure capable of isolating the lateral tension forces of the first length of mesh screen on opposite sides of the gate;  
wherein the pins are adapted to be inserted into the deck adjacent to the pool; and  
wherein the pool deck has a plurality of sockets, each socket adapted to receive a pin.
11. A lightweight fence and gate as claimed in claim 10 wherein the inserts of the poles are made of plastic.
12. A lightweight fence and gate as claimed in claim 10 wherein the pins are made of metal.
13. The fence and gate according to claim 10 wherein the pins are attached to the inserts by an adhesive.

14. A method for installing a self closing gate in a tensioned removable swimming pool fence comprising a plurality of poles, the poles including an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole interconnected by flexible mesh fencing comprising:

inserting the pins protruding from the plurality of poles into a deck surrounding a swimming pool with the flexible mesh fencing in tension to maintain the fence in tension, the deck having drilled sockets adapted to receive the pins;

the first and last poles of the series of poles defining a gate opening;

the first and last poles each constituting a pair of poles interconnected to each other to define a support structure capable of absorbing the tension of the flexible mesh fencing;

fabricating a gate including a pair of side rails, a cross rail and flexible mesh tensioned between the side rails;

hinging the first of the pair of side rails of the gate to the first of the pair of poles; and installing a latch between the second of the pair of side rails of the gate and the last pole of the tensioned fence;

whereby the gate is free to open and close without interference by the tension of the mesh of the fencing.

15. The method in accordance with claim 14 wherein the insert is made of plastic.

16. The method in accordance with claim 14 wherein the pin is made of metal.

17. The method in accordance with claim 14 wherein the pin is attached to the insert with an adhesive.

18. A gate pole comprising:

a lower end;

an insert that is received within the lower end of the fence pole; and

a pin that is fixedly attached to the insert, the pin having a diameter smaller than that on the pole and a portion that protrudes from the lower end of the fence pole;

wherein the pin is adapted to be inserted into a drilled socket in a pool deck.

19. The gate pole according to claim 18 wherein the insert is made of plastic.



20. The gate pole according to claim 18 wherein the pin is made of metal.

24. The fence and gate according to claim 1, wherein the pin is fixedly attached to the insert by an adhesive.

25. The gate pole according to claim 18, wherein the pin is fixedly attached to the insert by an adhesive.

**IX. EVIDENCE APPENDIX**

(NONE)

**X. RELATED PROCEEDINGS APPENDIX**

(NONE)